## Development Applications Committee Meeting 1 December 2020

### ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 – 73-79 RAILWAY LANE, WICKHAM – ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

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ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

ITEM-43 Attachment A: Draft Voluntary Planning Agreement
Voluntary Planning Agreement

Newcastle City Council
ABN 25 242 068 129

22 Park Avenue Pty Ltd
ACN 604 598 316
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Annexure A Draft Explanatory note
Agreement

Date

Parties

First party
Name: Newcastle City Council (Council)
ACN: 25 242 068 129

Second party
Name: 22 Park Avenue Pty Ltd (Developer)
ACN: 604 598 316

Background
A. The Developer is the owner of the Land.
B. The Developer has entered into an agreement with Mr Peter Blake who has made a Development Application to the Council for Development Consent to carry out the Development on the Land.
C. The Developer has offered to enter into this agreement in connection with the proposed Development.

Operative part
1 Definitions
In this agreement, unless the context indicates a contrary intention:

Act means the Environmental Planning and Assessment Act 1979 (NSW);

Address means a party’s address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;
CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means the proposed mixed use development on the Land, including the alterations and additions to the approved development as described in Development Application DA2018/00773 lodged by the Developer on 25 July 2019;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Land means Lot 110 DP 1018454, and Lot 11 DP 1106378 known as 73-79 Railway Lane, Wickham NSW;

Law means:
(a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
(b) any Approval, including any condition or requirement under it; and
(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, or section 109C of the Act if it continues to apply; and


2 Interpretation

In this agreement, unless the context indicates a contrary intention:

(a) (documents) a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;

(b) (references) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

(c) (headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;

(d) (person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and
their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

(e) (party) a reference to a party to a document includes that party’s personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;

(f) (president, CEO or managing director) the president, CEO or managing director of a body or Authority means any person acting in that capacity;

(g) (requirements) a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;

(h) (including) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;

(i) (corresponding meanings) a word that is derived from a defined word has a corresponding meaning;

(j) (singular) the singular includes the plural and vice-versa;

(k) (gender) words importing one gender include all other genders;

(l) (parts) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;

(m) (rules of construction) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

(n) (legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;

(o) (time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in , Australia, even if the obligation is to be performed elsewhere;

(p) (joint and several) an agreement, representation, covenant, right or obligation:

(i) in favour of two or more persons is for the benefit of them jointly and severally; and

(ii) on the part of two or more persons binds them jointly and severally;

(q) (writing) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;

(r) (replacement bodies) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

(s) (Australian currency) a reference to dollars or $ is to Australian currency;

(t) (month) a reference to a month is a reference to a calendar month; and
(u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

(a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.

(b) Schedule 1 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

(a) the Development; and

(b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 **Monetary Contribution**

(a) The Developers will pay to Council a monetary contribution of $955,000.00 indexed in accordance with increases in the CPI from the date of this agreement to the date of payment.

(b) The Monetary Contribution must be paid to Council prior to the issue of an Occupation Certificate for the Development.

(c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.

(d) The Monetary Contribution will be taken to have been made when the Council notifies the Developers in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council’s bank account for the full amount of the Monetary Contribution.

(e) The parties agree and acknowledge that the Monetary Contribution will be used towards the provision of local public amenities or infrastructure to support implementation of the Wickham Master Plan.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

(a) This agreement does not exclude the application of section 7.11 of the Act to the Development.

(b) This agreement does not exclude the application of section 7.12 of the Act to the Development.

(c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
(d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration

8.1 Registration

(a) The Developer agrees to procure the registration of this agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.

(b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:

   (i) the consent of each person who:

       (A) has an estate or interest in the Land registered under the Real Property Act 1900 (NSW); or

       (B) is seized or possessed of an estate or interest in the Land,

   (ii) the execution of any documents; and

   (iii) the production of the relevant certificates of title.

(c) The Developer at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:

   (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 30 Business Days after that date; and

   (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.2 Removal from Register

(a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it):

   (i) provided the Council is satisfied the Developer and Owner have duly fulfilled their obligations under this agreement, and are not otherwise in default of any of the obligations under this agreement; or

   (ii) in the event any Development Consent granted on determination of Development Application DA 2018/00773 lodged with the Council on 25 July 2019 lapses or is determined by a Court to be invalid.

9 Review of this agreement

(a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.

(b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
(c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other parties of:

(a) The nature of the dispute,
(b) The alleged basis of the dispute, and
(c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

(a) The representatives of the parties must promptly (and in any event within 10 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.

(b) The parties may, without limitation:

(i) resolve the dispute during the course of that meeting,
(ii) agree that further material about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for delivery of that material and further meetings); or
(iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

(a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;

(b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
(c) The mediator appointed pursuant to this clause 10.5 must:

(i) Have reasonable qualifications and practical experience in the area of the dispute; and

(ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;

(d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;

(e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;

(f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and

(g) In relation to costs and expenses:

(i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and

(ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 Litigation

If the dispute is not finally resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.7 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties’ obligations under this agreement.

11 Enforcement

11.1 Default

(a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (Default Notice) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

(b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

(c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.
11.2 Restriction on the issue of Certificates

(a) In accordance with section 6.10 of the Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109H of the Act) an Occupation Certificate must not be granted for the Development or any part of the Development unless the Monetary Contribution has been paid in full.

(b) For the purposes of this clause 11.2, “Former Building and Subdivision Provisions” has the same meaning as in clause 18 of the Environmental Planning and Assessment (Savings, Transitional and Other provisions) Regulation 2017.

11.3 General Enforcement

(a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.

(b) Nothing in this agreement prevents:

(i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and

(ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 Assignment

(a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.

(b) Any change of ownership or control (as defined in section 50AA of the Commonwealth Corporations Act 2001) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.

(c) Any purported Dealing in breach of this clause is of no effect.

12.2 Transfer of Land or Interest

(a) The Developer (Transferor) may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (Transferee) unless before it sells, transfers or disposes of that right, title or interest:

(i) The Transferor satisfies the Council that the proposed Transferee is financially capable of complying with the Developer’s obligations under this agreement;

(ii) The Transferor satisfies the Council that the rights of the Council will not be diminished or fettered in any way;

(iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Transferor under this agreement;
Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and

The Transferor and the Transferee pay the Council’s reasonable costs in relation to the assignment.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party’s absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a “Discretion”).

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

(a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,

(b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and

(c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (Notice):

(a) must be in writing and signed by a person duly authorised by the sender,
(b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:

(i) to Newcastle City Council:  
   Address:  
   Email: 
   Attention:  

(ii) to 22 Park Avenue Pty Ltd:  
    Address: 13/5 Cherry Street, Warrawee NSW 2074  
    Email: peter@blakeorganisation.com  
    Attention: Peter Blake

(c) is taken to be given or made:

(i) in the case of hand delivery, when delivered; and

(ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

(d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email

(a) A party may serve a Notice by email if the Notice:

(i) includes a signature block specifying:
   (A) the name of the person sending the Notice; and
   (B) the sender’s position within the relevant party;

(ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;

(iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;

(iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

   (A) to Newcastle City Council:  
   (B) to 22 Park Avenue Pty Ltd: peter@blakeorganisation.com

(b) The recipient of a Notice served under this clause 15.2 must:

(i) promptly acknowledge receipt of the Notice; and

(ii) keep an electronic copy of the Notice,
15.3 **Receipt of Notices sent by email**

(a) A Notice sent under clause 15.2 is taken to be given or made:

(i) when the sender receives an email acknowledgement from the recipient’s information system showing the Notice has been delivered to the email address stated above;

(ii) when the Notice enters an information system controlled by the recipient; or

(iii) when the Notice is first opened or read by the recipient, whichever occurs first.

(b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 **General**

16.1 **Relationship between parties**

(a) Nothing in this agreement:

(i) constitutes a partnership between the parties; or

(ii) except as expressly provided, makes a party an agent of another party for any purpose.

(b) A party cannot in any way or for any purpose:

(i) bind another party; or

(ii) contract in the name of another party.

(c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 **Time for doing acts**

(a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 **Further assurances**

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 **Variation**

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.
16.5 No assignment

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Legal expenses and stamp duty

Each party will pay their own legal costs and disbursements in connection with the negotiation, preparation and execution of this agreement.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

16.10 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 Invalidity

(a) A word or provision must be read down if:

(i) this agreement is void, voidable, or unenforceable if it is not read down;

(ii) this agreement will not be void, voidable or unenforceable if it is read down; and

(iii) the provision is capable of being read down.

(b) A word or provision must be severed if:

(i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and

(ii) this agreement will be void, voidable or unenforceable if it is not severed.

(c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

(a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver
(either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

(b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation or, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

(a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

(b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.

(c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this agreement.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.
## Schedule 1  Summary of requirements (section 7.4)

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<th>Subject and subsection of the Act</th>
<th>Planning Agreement</th>
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<td><strong>Planning instrument and/or Development Application</strong> – Section 7.4(1)</td>
<td>The Developer has:</td>
</tr>
<tr>
<td>(a) Sought a change to an environmental planning instrument</td>
<td>☐ Yes ☒ No</td>
</tr>
<tr>
<td>(b) Made, or propose to make a Development Application</td>
<td>☒ Yes ☐ No</td>
</tr>
<tr>
<td>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</td>
<td>☐ Yes ☒ No</td>
</tr>
<tr>
<td><strong>Description of the application</strong> - Section 7.4(3)(b)</td>
<td>Proposed alterations and additions to an approved mixed use development (residential building and commercial premises) on the Land as described in Development Application DA2018/00773 lodged 25 July 2018.</td>
</tr>
<tr>
<td><strong>Description of the land to which the planning Agreement applies</strong> – Section 7.4(3)(a)</td>
<td>Lot 110 DP 1018454, and Lot 11 DP 1106378 known as 73-79 Railway Lane, Wickham NSW.</td>
</tr>
<tr>
<td><strong>The scope, timing and manner of delivery of contribution required by the Planning Agreement</strong> – Section 7.4(3)(b)</td>
<td>Monetary contributions in the sum of $955,000.00 indexed in accordance with increases in the CPI. See clause 6.</td>
</tr>
<tr>
<td><strong>Applicability of section 7.11 of the Act</strong> – Section 7.4(3)(d)</td>
<td>Not excluded. See clause 7.</td>
</tr>
<tr>
<td><strong>Applicability of section 7.12 of the Act</strong> – Section 7.4(3)(d)</td>
<td>Not excluded. See clause 7.</td>
</tr>
<tr>
<td><strong>Applicability of section 7.24 of the Act</strong> – Section 7.4(3)(d)</td>
<td>Not excluded. See clause 7.</td>
</tr>
<tr>
<td><strong>Contributions to be taken into account under s 7.11</strong> - Section 7.4(3)(e)</td>
<td>Contributions are not to be taken into account when determining contributions under s 7.11.</td>
</tr>
<tr>
<td><strong>Mechanism for dispute resolution</strong> – Section 7.4(3)(f)</td>
<td>Clause 10.</td>
</tr>
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<td><strong>Enforcement of the Planning Agreement</strong> – Section 7.4(3)(g)</td>
<td>Clause 11 restricts the issue of an occupation certificate for the Development.</td>
</tr>
<tr>
<td><strong>No obligation to grant consent or exercise functions</strong> – Section 7.4(9)</td>
<td>See clause 14 (no fetter).</td>
</tr>
</tbody>
</table>
Executed as an agreement

Signed for and on behalf of Newcastle City Council ABN 25 242 068 129 by its authorised representative who warrants that they are duly authorised to execute this document on behalf of Newcastle City Council in the presence of:

..........................................................
Signature of Witness

..........................................................
Signature of Authorised Representative

..........................................................
Print name of Witness

Executed by 22 Park Avenue Pty Ltd ACN 604 598 316 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

..........................................................
Signature of Director

..........................................................
Signature of Director/Secretary

..........................................................
Print name of Director

..........................................................
Print name of Director/Secretary
Annexure A Draft Explanatory note

Explanatory Note
Exhibition of draft Voluntary Planning Agreement
Lot 110 DP 1018454, known as 73-79 Railway Lane, Wickham

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (the Planning Agreement) under Section 7.4 of the Environmental Planning and Assessment Act 1979 (the Act).

The Planning Agreement will require the provision of monetary contributions in connection with proposed development of land at Lot 110 DP 1018454 and Lot 11 DP 1106378, known as 73-79 Railway Lane, Wickham NSW.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (the Regulations).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

22 Park Avenue Pty Ltd (the Developer) made an offer to Newcastle City Council (the Council) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as Lot 110 DP 1018454 and Lot 11 DP 1106378, known as 73-79 Railway Lane, Wickham NSW (the Land).

Description of the Development Application to which the Planning Agreement applies

Proposed alterations and additions to an approved mixed use development (residential building and commercial premises) on the Land as described in Development Application DA2018/00773 lodged 25 July 2018.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires a monetary contribution in the amount of $955,000.00 adjusted in accordance with increases in the Consumer Price Index from the date of the agreement to the date of payment.

The monetary contributions are to be used by Council towards the provision of public amenities and infrastructure to support implementation of the Wickham Master Plan 2017.
Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement will contribute to the provision of public amenities and infrastructure in the vicinity of the development and increasing the connectivity and amenity for people who will live, work or visit the locality. In doing so, the Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources (section 1.3(a) EP&A Act).
- To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (section 1.3(b) EP&A Act).
- To promote the orderly and economic use and development of land (section 1.3(c) EP&A Act).
- To promote good design and amenity of the build environment (section 1.3(g) of the EP&A Act).

The delivery of the contributions under the Agreement will be in the public interest because they will result in the provision of public infrastructure and will improve amenity for residents and visitors to the Wickham area. The provision of these items will promote the social and economic welfare of the community.

The Planning Purposes served by the Planning Agreement

The delivery of the contributions will provide community benefits that will facilitate the redevelopment of the Land envisaged by relevant planning strategies, including the Wickham Master Plan. The monetary contribution will be used to provide public amenities and infrastructure in the vicinity of the Development as proposed in the Wickham Master Plan. This contribution will assist in implementing the Council’s strategy and vision for the Wickham area as identified in the Wickham Master Plan. The contributions to be delivered under the Planning Agreement will contribute to providing appropriate facilities and infrastructure for the Development and the surrounding area, producing a good planning outcome for the Development of the Land. As it would be difficult to obtain these benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the contributions can be delivered.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council’s Charter

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public;
- to give councils a role in the management, improvement and development of the resources of their areas.

By enabling Council to provide public infrastructure and improve public domain areas, the Planning Agreement is consistent with the following guiding principles for councils, set out in section 8A of the *Local Government Act 1993* (replacing the Council’s Charter):
• Councils should provide strong and effective representation, leadership, planning and decision-making.
• Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
• Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
• Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
• Councils should consider the long term and cumulative effects of actions on future generations.
• Councils should consider the principles of ecologically sustainable development.
• Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Whether the Planning Agreement Conforms with the Council’s Capital Works Program

The public amenities and infrastructure to be provided will assist Council in implementing the Wickham Master Plan. The Planning Agreement will provide capital infrastructure and public benefits beyond those set out in Council’s capital works program and will enable Council to advance the construction of relevant infrastructure. The Planning Agreement provides for infrastructure needs that will arise as a consequence of the proposed development of the Land.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The contributions under the Planning Agreement must be delivered prior to the issue of an occupation certificate for the Development. The Planning Agreement restricts the issue of an occupation certificate if the obligation to deliver the contributions has not been satisfied.
ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

ITEM-43 Attachment B: Plans and Elevations
ARCHITECTURAL DRAWING SCHEDULE

UNIT MIX - 190 UNITS TOTAL

12 x STUDIOS
45 x 1 BED UNITS
131 x 2 BED UNITS
4 x 3 BED UNITS

4600m² RETAIL / COMMERCIAL SPACE

228 PROPOSED CAR SPACES
261 TOTAL REQUIRED CAR SPACES
(153 RESIDENTIAL, 39 VISITORS, 9 COMMERCIAL)

BASIX INFORMATION

PLANNING CONTROLS

SITE AREA 4556m²

ALLOWABLE FSR 4:1 (MAX. GFA 18,224m²)

PROPOSED GFA 17,700m²

PROPOSED FSR 3.88:1 (97.1%)

ISSUE FOR DA

Subject of approved DA - No. 2016/384

Subject site

Newcastle Harbour

Railway Street

Railway Lane

Tudor Street

Station Street

Bishopsgate Street

Subject of this DA

Alterations & Additions

Railway Lane

Railway Lane
NEW MIXED USE RESIDENTIAL DEVELOPMENT

73-79 RAILWAY LANE
WICKHAM 2293

PETER BLAKE

F1, LEVEL 1, 683-689 GEORGE STREET
SYDNEY NSW

SURVEY DIAGRAM - WITH LIFT OVERRUNS

NOT FOR CONSTRUCTION

© ACN 002 912 843 | ABN 82 644 649 849

Nominated Architect - Bernard Collins
NSW Architects Registration No: 4438

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NEW MIXED USE RESIDENTIAL DEVELOPMENT

73-79 RAILWAY LANE
WICKHAM 2293

PETER BLAKE
F1, LEVEL 1, 683-689 GEORGE STREET
SYDNEY NSW

PERSPECTIVES - SHEET 1

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.

COMMENTSDA TEREV PROJECT:
DRAWN: DATE: SCALES:

REV: PROJECT No:

DRAWING: CLIENT:

SITE: DRN CHKD VRFD

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Nominated Architect - Bernard Collins
NSW Architects Registration No: 4438

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EJE ARCHITECTURE

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FEB 2016 NTS

PHB FEB 2016 NTS

10670 SK A1001 M

SUBJECT OF THIS DA

ISSUE FOR DEVELOPMENT APPLICATION
2016.04.05 BCD PHB
REV. DA ISSUE TO CLIENT FOR REVIEW
2016.08.26 BCE PHB
REVISED ISSUE FOR DEVELOPMENT APPLICATION
2016.08.30 BCF PHB
ISSUE TO COUNCIL - ENGINEERING REQUIREMENTS
2016.10.05 BCG PHB
REVISED ISSUE FOR DEVELOPMENT APPLICATION
2016.11.22 BCH PHB
REVISED ISSUE FOR DEVELOPMENT APPLICATION
2016.12.23 BCJ PHB
ISSUE TO COUNCIL - CARPARKING ABOVE GROUND
2017.04.24 BCK PHB
PRELIMINARY ISSUE FOR DEVELOPMENT APPLICATION
2018.03.16 BCL PHB
ISSUE FOR DEVELOPMENT APPLICATION - ALTERATIONS & ADDITIONS
2018.05.04 BCM PHB

SUBJECT OF THIS DA
NEW MIXED USE RESIDENTIAL DEVELOPMENT
73-79 RAILWAY LANE
WICKHAM    2293

PETER BLAKE
F1, LEVEL 1, 683-689 GEORGE STREET
SYDNEY    NSW

PERSPECTIVES - SHEET 5

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.

SUBJECT OF THIS DA

PERSPECTIVE FROM SOUTH-EAST - COURTYRAD
NEW MIXED USE RESIDENTIAL DEVELOPMENT
73-79 RAILWAY LANE
WICKHAM 2293

PETER BLAKE
F1, LEVEL 1, 683-689 GEORGE STREET
SYDNEY NSW

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.

SUBJECT OF THIS DA

PERSPECTIVE FROM SOUTH-WEST - WICKHAM PARK
NEW MIXED USE RESIDENTIAL DEVELOPMENT

73-79 RAILWAY LANE
WICKHAM 2293

PETER BLAKE
F1, LEVEL 1, 683-689 GEORGE STREET
SYDNEY NSW

PERSPECTIVES - VIEW FROM WEST - SHEET 01

WORK IN FIGURED DIMENSIONS IN PREFERENCE TO SCALE. CHECK DIMENSIONS AND LEVELS ON SITE PRIOR TO THE ORDERING OF MATERIALS OR THE COMPLETION OF WORKSHOP DRAWINGS. IF IN DOUBT ASK. REPORT ALL ERRORS AND OMISSIONS.

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DATE PRINTED: 12/11/2019
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REV. ISSUE FOR DEVELOPMENT APPLICATION - ALTERATIONS & ADDITIONS 2019.11.12 BCA PHB 74

PERSPECTIVE VIEW FROM WEST
NEW MIXED USE RESIDENTIAL DEVELOPMENT
73-79 RAILWAY LANE
WICKHAM 2293
PETER BLAKE
F1, LEVEL 1, 683-689 GEORGE STREET
SYDNEY    NSW

SCHEDULE OF EXTERNAL FINISHES

- PRECAST CONCRETE WALL PANEL EXAMPLE (WHITE PAINT FINISH)
- ALUMINIUM LOUVRE EXAMPLE (POWDERCOAT FINISH)
- METAL COMPOSITE CLADDING EXAMPLE
- GLASS BALUSTRADE EXAMPLE
- FACE BRICKWORK EXAMPLE
- PLANTER BOX EXAMPLE

- ARTICULATED PRECAST CONC. WALL PANEL WITH PAINT FINISH (PCP.1)
- ARTICULATED PRECAST CONC. WALL PANEL WITH NATURAL FINISH (PCP.2)
- CLEAR GLASS TO WINDOWS AND DOORS
- METAL COMPOSITE CLADDING (MCC.2) AS SCHEDULED
- METAL COMPOSITE CLADDING (MCC.1) AS SCHEDULED
- EXPRESSED JOINT WITH METALL BLADE
- PLANTER BOX, METAL, PAINT FINISH AS SCHEDULED
- GLASS BALUSTRADE
- FACE BRICKWORK
EXAMPLES OF PAVING BRICKS USED IN NEWCASTLE AND PARTICULARLY IN WICKHAM
BRICK 1 & 3 WITH ITS DIAMOND PATTERNS SERVED AS INSPIRATION FOR THE DESIGN OF PRECAST CONCRETE WALL PATTERN
(Book Source: “AND SO WE GRAFT FROM SIX TO SIX, THE BRICKMAKERS OF NEW SOUTH WALES” BY WARWICK GEMMELL)

EXAMPLE OF PAVING BRICKS USED IN NEWCASTLE AND PARTICULARLY IN WICKHAM
(Source: Google Street View)

PRECAST CONCRETE WALL PANEL LAYOUT WITH ARTISTIC INTERPRETATION OF DIAMOND PATTERN

EAST ELEVATION (CARPARK LEVELS)

WEST ELEVATION (CARPARK LEVELS)

NORTH ELEVATION (CARPARK LEVELS)

PCP 2
PRECAST CONCRETE WALL PANEL EXAMPLE
SMOOTH FINISH WITH WHITE NAUKAW STAIN

NEW MIXED USE RESIDENTIAL
DEVELOPMENT

13-19 RAILWAY LANE
WICKHAM 2293

CLIENT
PETER BLAKE
P/ LEVEL 1, 483-489 GEORGE STREET
SYDNEY NSW

SCHEDULE OF EXTERNAL FINISHES - PRECAST CONCRETE
landscape development application
Railway Lane Mixed Use Residential Development

sheet index

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The following Landscape Design Report has been prepared in accordance with the requirements of Newcastle Local Environment Plan 2012 and Newcastle Development Control Plan 2012.

The site falls within the ‘West End Precinct’ of Newcastle City Council’s City Centre Public Domain Technical Manual 2014 and the Wickham Master Plan (WMP) November 2017.

The subject site is located at 73-79 Railway Lane, Wickham. It consists of 2 lots (Lot 119 — DP 1048445 Lot 11 — DP 1046378) with a total site area of 4556sqm. A single large industrial building currently exists onsite. Access to the site is via Railway Lane which runs along the southern boundary. The roadway width is currently less that 4m from the existing kerb and gutter to the rail corridor boundary. Railway Lane terminates on the western side of the site.

**landscape character and visual amenity**

Land use in the immediate area is primarily split between residential and light industrial with the street layout in a fine grid with narrow road reserves. Front setbacks are small to allow for the terraces and semi-detached townhomes resulting in a landscape character dominated by the built form. Street tree plantings of Lophostemon confertus and Cupaniopsis anacardoides exist on Station and Railway Streets respectively.

The closest cross street, Railway Street, previously a major connecting road, has recently been cut at the Railway Lane intersection.

Immediately west of the site is the former Morro Park Bowling Club site, which is currently unoccupied with the exception of a utilities box recently installed following completion of the Newcastle Interchange works. Wickham Park adjoins the area further west, however currently no public thoroughfare exists to the west from Railway Lane.

The Great Northern Line rail corridor runs along the south side of railway lane. East of the site consists generally of one and two storey residential buildings, plus the Lois O’Gorman Hotel on the north-western corner of the Railway Lane intersection with Railway Street. Adjoining the northern boundary is a large industrial building, currently occupied by Fuchs Lubricants.

The site is zoned B4 Mixed Use Development.

The topography of the local area is generally flat. The levels across the site fall approximately 1.5m west to east.

Soils of the area are characterised by course loamy sand, consisting of low organic matter and low water retention. (NCM Street Tree Masterplan 2011)

Soil volume to allow substantial plantings, to balance screening and floor, provide a mix of useable space and mass planting and include good advantage of the level change from the street and provide significant greening at a human scale.

A number of community areas are also provided on level four and level nine. The proposed layout of these spaces retains flexibility for larger gatherings while offering a mix of smaller spaces to attract a range of user groups.

The larger private residential courtyards that open out on to the second floor, provide a mix of useable space and mass planting and include good soil volume to allow substantial plantings, to balance screening and privacy with maintaining good solar access.

The use of *Lophostemon confertus* (NCC Street Tree Masterplan (WMP) November 2017) will provide significant greening to the space. The BBQ shelter off Railway Lane features a number of raised planters which take mulch appearing as a visual focus in this green space. The entry forecourt of Railway Lane. A single large industrial building currently exists onsite. Access to the site is via Railway Lane which runs along the southern boundary. The roadway width is currently less that 4m from the existing kerb and gutter to the rail corridor boundary. Railway Lane terminates on the western side of the site.

The proposed inclusion of street trees along the railway lane frontage will enhance amenity at street level while adding to the existing pattern of street trees in the immediate area.

The addition of tree plantings on level four of the development, to the south, east and north will work with the level two tree plantings to the west, to vegetate and soften the building at a local level.

Street tree plantations associated with a proposed road immediately to the west (Wickham Master Plan (WMP) November 2017) will improve street level amenity at this elevation when viewer access increases with the road construction.

The development will contribute to, and integrate with the evolving built landscape character and visual amenity in accordance with the requirements of Newcastle Local Environment Plan 2012 and Newcastle Development Control Plan 2012.

The use of *Lophostemon confertus* (NCC Street Tree Masterplan (WMP) November 2017) is proposed for the public domain areas. This is a variation from the Public Domain Technical Manual Specification as this better reflects the scale and quality of the proposed development, without being a significant departure visually, from the asphalt nominated for this street type/location.

**visual access**

The site is currently afforded very little visual access due to its location at the point Railway Lane terminates, and due to there now being no access north across the rail corridor, along Railway Street. Buildings to the south of the rail corridor do not open out to the north, therefore not facilitating views of the site. View from the rail services traveling along the corridor adjacent will be primary point of visual access on a local scale.

The site can also be viewed, looking east from the Maitland Road overhead bridge, around 300m along the road corridor.

The development will contribute to, and integrate with the evolving built form of the Wickham area from a range of more distant vantage points. Tree planting on level two and level four will benefit softened from some viewpoints with further fringes of vegetation on the west of level nine and level four also enhancing the building facades.

The proposed inclusion of street trees along the railway lane frontage will enhance amenity at street level while adding to the existing pattern of street trees in the immediate area.

The addition of tree plantings on level four of the development, to the south, east and north will work with the level two tree plantings to the west, to vegetate and soften the building at a local level.

Street tree plantations associated with a proposed road immediately to the west (Wickham Master Plan (WMP) November 2017) will improve street level amenity at this elevation when viewer access increases with the road construction.

The proposed development is to be mixed use, consisting of ‘U’ shaped building of 14 storeys plus 1 carpark level underground.

A large internal courtyard between the two wings provides a semi-private community space including a large town area, covered BBQ with covered and open paved seating areas. Tree plantings throughout this space filter the views both from and to the apartments surrounding, while along with the large town area, add significant greening to the space. The BBQ shelter roof is to include an extensive decorative treatment to provide strong interest from above, with colourful succulent plantings/coloured glass mosaic appearing as a visual focus in this green space. The entry forecourt off Railway Lane features a number of raised planters which take advantage of the level change from the street and provide significant greening at a human scale.

A number of community areas are also provided on level four and level nine. The proposed layout of these spaces retains flexibility for larger gatherings while offering a mix of smaller spaces to attract a range of user groups.

The larger private residential courtyards that open out on to the second floor, provide a mix of useable space and mass planting and include good soil volume to allow substantial plantings, to balance screening and privacy with maintaining good solar access.

The use of *Lophostemon confertus* (NCC Street Tree Masterplan (WMP) November 2017) is proposed for the public domain areas. This is a variation from the Public Domain Technical Manual Specification as this better reflects the scale and quality of the proposed development, without being a significant departure visually, from the asphalt nominated for this street type/location.

**railway lane mixed use residential development**

**site - general description**

Railway Lane Mixed Use Residential Development

**view looking east along Railway Street**

**view looking west along Railway Lane**
level two landscape plan

Railway Lane Mixed Use Residential Development

level 2 courtyards

Scale: 1:250

west wing

Raised planter 1m high to provide adequate soil volume for future tree plantings. 500mm wide capping to act as informal seating edge to the raised lawn terrace adjacent.

Multi-purpose raised lawn service with bench seating.

Raised planter to apartment private courtyard. 500mm wide capping to act as informal seating edge to the raised lawn terrace adjacent.

2300mm high privacy screening to private courtyards.

Bench seating returned along wall to provide additional gathering areas to accommodate multiple groups of varying numbers within the common courtyard space.

east wing

Communal BBQ and table settings below shelter to architects detail.

Raised planter to apartment private courtyard. 500mm wide capping as air planting parterre plant boundaries.

1m high garden beds for tree plantings which will also provide partial screening to common courtyard space to allow some privacy to individual groups using the space at the same time.

Use of roof over with decorative treatment to include coloured glass modules / domes providing air of seclusions to provide additional visual appeal from below.

PLAY LAWN

Inground trampoline and sculptural play element to communal synthetic lawn softfall play area.

Internal park area to consist of a raised lawn high with communal BBQ space beneath a decorative roof feature.

Roof outline over is to be repeated in a concrete surface on the groundplane below.

Hand railing areas to be at lawn level and defined by a 500mm high edge.

Internal lawn area to consist of a raised lawn high with communal BBQ space beneath a decorative roof feature.

Roof outline over is to be repeated in a concrete surface on the groundplane below.

Mass planting areas are to be at lawn level and defined by a 500mm wide paver edging.

Feature tree plantings of Casuarina equisiliata (tara) tree within the community courtyard.

Woodland playground and sculptural play element to communal synthetic lawn softfall play area.

Multi-purpose raised lawn terrace with bench seating.

Raised planter to apartment private courtyard. Hedges planting to assist screening with mass planting below.

Internal lawn area to consist of a raised lawn high with communal BBQ space beneath a decorative roof feature.

Roof outline over is to be repeated in a concrete surface on the groundplane below.

Mass planting areas are to be at lawn level and defined by a 500mm wide paver edging.

Internal lawn area to consist of a raised lawn high with communal BBQ space beneath a decorative roof feature.

Roof outline over is to be repeated in a concrete surface on the groundplane below.

Mass planting areas are to be at lawn level and defined by a 500mm wide paver edging.
level four landscape plan
Railway Lane Mixed Use Residential Development

- **Adjacent 2-storey townhouse below**
- Landscape widen to provide privacy to adjacent residences and cross-fall
- Covered breakfast area with outdoor dining furniture, door to arch and lift
- Select roof pavers to terrace area with bi-fold doors
- Covered lobby to suit community areas
- Umbrella and bench seating

**Existing features**:• Tree plantings below community room• Raised planter beds with community terrace

**Selection** of:• Raised planter beds to provide a range of visual interest and boundary screening• Multi-purpose platforms to suit general community needs• High hedge screening to provide privacy to adjacent residences below• Covered BBQ/Kitchen area with outdoor dining furniture

**Guidelines** for:• Non-slip 'Timber look' tiles to community room/covered dining area

**Scale**: 1:250
level nine landscape plan

Railway Lane Mixed Use Residential Development

level nine landscape plan

Railway Lane Mixed Use Residential Development

level nine landscape plan

Railway Lane Mixed Use Residential Development
plant list

1. Caesalpinia ferrea Leopard Tree
2. Viburnum odoratissimum 'Emerald Lustre' Viburnum
3. Malvaviscus capuliflora Palma gris
4. Dielles bicolor Fortnight Lily
5. Hymanocallis littoralis Spider Lily
6. Zamia furfuracea Cardboard Palm
7. Trachycladium asialicum Japanese Star Jasmine
8. Hibbertia scandens Snake Vine
9. Lomandra banksii Tanko
10. Pyrus calleryana 'Capitol' Pyrus 'Capitol'
11. Plumeria acutifolia Frangipani
12. Banksia integrifolia Coastal Banksia
13. Syzygium australe 'Resilience' LillyPilly
14. Asplenium australasicum Birds Nest Fern
15. Alpinia zerumbet Shell Ginger
16. Alocasia brisbanensis Curuparo
17. Viola hederacea Native Violet
18. Cycas revoluta Sago Palm
ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

ITEM-43  Attachment C:  Draft Schedule of Conditions
DRAFT SCHEDULE OF CONDITIONS

Application No: DA2018/00773

Land:
Lot 110 DP 1018454
Lot 11 DP 1106378

Property Address:
73 Railway Lane Wickham NSW 2293
79 Railway Lane Wickham NSW 2293

Proposed Development:
Alterations and additions to approved mixed-use development (DA2016/00384), comprising an additional four storeys and 40 residential apartments.

SCHEDULE 1 - DEFERRED COMMENCEMENT CONDITIONS

The following deferred commencement conditions must be satisfied prior to the consent becoming operative:

PART A – DEFERRED COMMENCEMENT CONDITIONS (CONDITIONS TO BE SATISFIED PRIOR TO CONSENT OPERATING)

The consent is not to operate until the following conditions are satisfied, within 24 months, of the date of this determination:

1. VOLUNTARY PLANNING AGREEMENT
   a. That a Voluntary Planning Agreement (VPA) in accordance with the public benefit offer made by 22 Park Avenue Pty Ltd is to be executed and submitted to Council,
   b. The payment of monetary contribution must be provided to Council in accordance with the VPA,
   c. The VPA, as executed, must be registered on the Title of the land in accordance with the VPA.

2. SYDNEY TRAINS AND TRANSPORT FOR NSW

The Applicant shall prepare and provide to Sydney Trains and Transport for NSW for approval/certification the following final version items:

a. Geotechnical and Structural report/drawings, including a hydrogeological engineering assessment, that meet Sydney Trains requirements. The Geotechnical Report must be based on a minimum of three actual borehole testing conducted on the site closest to the rail corridor. Consideration to potential risks to the rail corridor and assets must be included.

b. Construction methodology with construction details pertaining to structural support (including any potential dewatering) during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.
c. Cross sectional drawings to Sydney Trains requirements showing the rail corridor (including up to the nearest track within the corridor), sub soil profile, proposed basement excavation including horizontal and vertical measurements, and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.

d. Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement (including, but not limited to, any Right of Carriageways) and rail corridor land, as well as the Wickham Transport Interchange Project to Sydney Trains requirements.

e. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.

- Evidence that will sufficiently enable Council to be satisfied as to those matters identified in the deferred commencement conditions, as indicated above, must be submitted to Council within 24 months of the date of this deferred commencement consent, failing which, this deferred commencement consent will lapse,

- The consent will not operate until such time that the Council notifies the applicant in writing that deferred commencement conditions, as indicated above, have been satisfied, and

- Upon Council giving written notification to the applicant that the deferred commencement conditions have been satisfied, the consent will become operation from the date of that written notification, subject to conditions of consent as shown in Part B (Operational Conditions of Consent).

PART B – OPERATIONAL CONDITIONS OF CONSENT

Upon written confirmation from Council that the deferred commencement condition has been satisfied, the consent will become operational from the date of that written confirmation, subject to the conditions of consent outlined below, and any other additional conditions reasonably arising from consideration of the deferred commencement conditions.

RELATIONSHIP WITH EXISTING CONSENT DA2016/00384

1. This application is approved in conjunction with the DA2016/00384 approval (which covers levels 3-7) and conditions of both consents are applicable to the total overall development.

2. The conditions and advisory matters contained within Development Consent No. DA2016/00384 (as modified) are incorporated in their entirety within this consent. Accordingly, Development Consent No. DA2016/00384 and this approval must be read as one document.

3. In the event of any inconsistency between Development Consent No. DA2016/00384 and this approval, in particular between the approved plans and documentation, this approval shall take precedence to the extent of any inconsistency.

APPROVED DOCUMENTATION AND CONTRIBUTIONS

4. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any
conditions of this consent.

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan</td>
<td>Project 10670 Dwg A001 Rev G</td>
<td>EJE Architecture</td>
<td>04/05/18</td>
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<tr>
<td>Basement Lvl 1</td>
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<td>EJE Architecture</td>
<td>20/8/19</td>
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<tr>
<td>Ground Level</td>
<td>Project 10670 Dwg A102 Rev AB</td>
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<td>4/10/19</td>
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<td>04/05/18</td>
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Schedule of External Finishes (Precast Concrete)  

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<td>Proj 10670.5 Dwg No L02-L07</td>
<td>Terras</td>
<td>17/10/19</td>
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<td>Acid Sulphate Soil Management Plan</td>
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<td>RCA Australia</td>
<td>April 2018</td>
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<td>Concept Stormwater Management Strategy</td>
<td>Job No. 161497 NL161497_B01 (C)</td>
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<td>Northrop Consulting Engineers</td>
<td>08/05/18</td>
</tr>
</tbody>
</table>

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

5. A total monetary contribution of $825,966.00 is to be paid to the City of Newcastle, pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of the first occupation certificate in respect of the proposed development.

The payment deferral arrangements enabling payment prior to the issue of the first occupation certificate applies from the 8th July 2020 to the 25 September 2020, when the COVID-19 prescribed period ends. The payment deferral arrangements cease to apply if a construction certificate has not been issued for the development by 25 September 2022.

Note:

i) This condition is imposed in accordance with the provisions of the City of Newcastle’s Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019.

ii) The City of Newcastle’s Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement.

iii) Certifiers are required to obtain documentation from City of Newcastle confirming the payment of infrastructure contributions prior to the issuing of an occupation certificate.

iv) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and, as a guide, these approximate dates are as follows:

<table>
<thead>
<tr>
<th>Indexation quarters</th>
<th>Approximate release date</th>
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</thead>
<tbody>
<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
</tr>
</tbody>
</table>
Any party intending to act on this consent should contact City of Newcastle’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. On-site parking accommodation is to be provided for a minimum of 205 car spaces (159 for residents, 39 for resident visitors (including 4 disabled spaces), 7 spaces for retail, 11 motorbikes and 192 secured bicycle spaces (Class 2) and 19 bicycle spaces (Class 3) and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle DCP 2012. Full details are to be included in documentation for a Construction Certificate application.

7. Roof water from the proposed building is to be directed to the proposed underground water tank (minimum size 30,000L) and be reticulated there from to toilet cisterns and cold water washing machine taps, with a mains water top-up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with the Plumbing Code of Australia. Full details are to be included in documentation for a Construction Certificate application.

8. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to City of Newcastle’s drainage system by means of an interallotment drainage line or underground pipe directly to the street gutter. Details are to be included in documentation for a Construction Certificate application.

9. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls. Details are to be included in documentation for a Construction Certificate application.

10. A flood emergency response plan is to be prepared by a professional engineer, who is experienced in flood management, and the plan is to be put in place prior to occupation of the site for the intended use. The plan is to include an education and awareness component for the workforce, detailed evacuation procedures to interface with the Bureau of Meteorology’s flood warning system and the local State Emergency Services plan and provisions for any third parties likely to be involved.

A flood emergency response plan is to describe the following components:

a) Likely flood behaviour
b) Flood warning systems
c) Education awareness program
d) Evacuation and evasion procedures
e) Evacuation routes and flood refuges and
f) Flood preparedness and awareness procedures for residents and visitors

Considerations are to include the full range of flood risks, the proposed use of the site, site access constraints and local area evacuation routes to high ground. The plan is to be aimed at self-directed evacuation or evasion to minimise the draw on limited State
Emergency Services resources. Details are to be included in documentation for a Construction Certificate application.

11. Facilities are to be provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements are to be made for regular removal and disposal of same. The required garbage facility is to be suitable for the accommodation of City of Newcastle approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a Construction Certificate application.

12. Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

13. An electronic copy of a dilapidation report, prepared by a suitability qualified person, is to be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The dilapidation report is to document and contain a photographic record of the condition of the adjoining buildings, infrastructure and roads.

14. A statement from a qualified designer, verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, is to be submitted to the Certifier prior to the issue of a Construction Certificate.

Note: ‘Qualified Designer’ means a person registered as an architect in accordance with the Architects Act 2003.

15. The external cladding material shall be detailed in the application for a Construction Certificate and have thermal qualities which do not pose a fire safety threat to inhabitants of the building.

16. The developer designing and constructing the following Public Domain Plan Works within Railway Lane to the intersection of Railway Street and Station Street at no cost to Council and in accordance with Council’s City Centre Public Domain Manual, Wickham Masterplan, City guidelines, design specifications and Australian Standards.

Detailed design is to be prepared generally as per the architectural plans prepared by EJE Architecture Project No. 10670 Dwg No. A001 and Northrop Consulting Engineers Dwg No. C53 DA for the works in Railway Lane / Railway St / Station St generally as follows:

i. New road and pavement, kerb and gutter on both sides of the laneway and associated streetscape and treatment at the end of Railway Lane.

ii. Design of new drainage, connection to existing drainage and private property drainage connections.

iii. Driveways (including removal of redundant driveways), turning areas and loading bay design (note: garbage will need to be collected from loading bays only and not from kerbside).

iv. Design of ramps and pedestrian crossings at the intersection of Railway St, Railway Lane and Station St including lighting design.
vi. Install new street trees in accordance with Council requirements (as necessary) and adjust service pit levels to match new footpath levels/roadway.

ix. Install the required parking and mandatory signage.

xi. Street lighting upgrade within the vicinity of the development to Ausgrid Standards including any lighting required at the intersection of Railway St and Station St for new ramps and pedestrian crossings. Lighting to be P2 lighting category as per City Centre Public Domain Technical Manual.

xii. Dedication of land along Railway Lane between existing Council and State Road reserve and proposed new property boundary as road reserve.

Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer and landscape architect with experience and competence in the related field and submitted to Council for approval pursuant to Section 138 of the Roads Act 1993 (NSW). The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council, before the issue of any Construction Certificate (except for demolition and bulk excavation works).

Note:
The Public Domain works are to be implemented and construction works are to be completed prior to the issue of any Occupation Certificate including the Land dedication as road reserve.

17. Traffic management devices in the form of a safety mirrors, Stop and Give Way to Pedestrians signs and Line marking is to be installed at the entry of the proposed basement driveway within the property. Such devices are to be constructed in accordance with AS/NZS 2890.1:2004:Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.

18. A structural engineer is to determine the appropriate location and depth of the proposed underground tank and the On-site Detention tank (70 KL) and certify that the tanks will not adversely affect the performance of any building foundation footings or slabs when the tank is empty. Full details are to be included in documentation for a Construction Certificate application.

19. The ground floor level of the proposed buildings or building additions is to be not below 2.70m Australian Height Datum and being indicated on plans for a Construction Certificate application. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor's Certificate is to be forwarded to the Principal Certifying Authority.

20. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays, sufficient to discourage the encroachment of vehicles thereon. Details are to be included in documentation for a Construction Certificate application.

21. All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, as indicated on the stormwater management concept plans and stormwater management report prepared by Northrop Consulting Engineers Job No. NL161497, Drawings numbers C50 DA - C54 DA Rev A dated 08/05/2018. Full details are to be included in documentation for any Construction Certificate application.

22. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required by the conditions of this consent are to
be detailed on a comprehensive landscape plan and specification. The plan and specification are to be prepared in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

a) cross sections through the site
b) proposed contours or spot levels
c) botanical names
d) quantities and container size of all proposed trees
e) shrubs and ground cover
f) details of proposed soil preparation
g) mulching and staking
h) treatment of external surfaces and retaining walls where proposed
i) drainage, location of taps and
j) maintenance periods.

The plan and specification are to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

23. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Details are to be included in documentation for a Construction Certificate application.

24. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation’s compliance certificate (refer Section 50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

25. A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.

26. A separate application is to be lodged and consent obtained from the City of Newcastle for all works within the road reserve pursuant to Section 138 of the Roads Act 1993. The consent is to be obtained, or other satisfactory arrangements confirmed in writing from the City of Newcastle, before the issue of a Construction Certificate.

27. The visitor parking bays are to be constructed in paving bricks or in an alternative paving material that contrasts in colour and texture with that used in the construction of the driveway. Details are to be included in documentation for a Construction Certificate application.

28. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of a depth to suit design traffic and be sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers. Details are to be included in documentation for a Construction Certificate application.
ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

ITEM-43 Attachment D: Processing Chronology
### DA2018/00773 – 73-79 Railway Lane Wickham

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<td>Application Lodged</td>
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<tr>
<td>9 August 2018</td>
<td>Request for further information</td>
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<tr>
<td>10 December 2018</td>
<td>Further information received</td>
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<tr>
<td>16 Jan-21 Feb 2019</td>
<td>Public Notification</td>
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<tr>
<td>12 June 2019</td>
<td>Request for further information</td>
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<tr>
<td>11 February 2020</td>
<td>Further information received</td>
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<td>29 April 2020</td>
<td>Deemed refusal Appeal lodged Land &amp; Environment Court</td>
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ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

ITEM-40 Attachment E: General Terms of Approval - Subsidence Advisory NSW
Newcastle City Council  
ATTN: Damian Jaeger  
Via Email: mail@ncc.nsw.gov.au

Our ref: TBA18-02261

Dear Damian

RE: PROPOSED alterations and additions to a mixed-use development AT 73 & 79 RAILWAY LANE WICKHAM; LOT 11 DP 1106378 AND LOT 110 DP 1018454 – TBA18-02261 - DA 2018-00773

GENERAL TERMS OF APPROVAL

I refer to the above integrated development referred on 26 July 2018. Attached, please find Subsidence Advisory NSW General Terms of Approval (GTA) for the development of land as detailed above. Please note conditions are detailed under Schedule 2. The stamped approved plans are attached.

Once relevant documentation to meet the conditions in Schedule 2 is available, please submit via email to SA-Risk@finance.nsw.gov.au quoting reference TBA18-02261.

This satisfies the approval of Subsidence Advisory NSW under section 22 of the Coal Mine Subsidence Compensation Act 2017.

Should you have any questions about the attached general terms of approval, I can be contacted by phone on 4908 4300 or via email at sa-riskeng@finance.nsw.gov.au.

Yours faithfully,

Melanie Fityus  
Senior Risk Engineer  
1 July 2019
GENERAL TERMS OF APPROVAL

Issued in accordance with Section 4.46 of the Environmental Planning & Assessment Act 1979 for the subdivision / development of land.

As delegate for Subsidence Advisory NSW under delegation executed 1 July 2019, general terms of approval are granted for the development described in Schedule 1, subject to the conditions attached in Schedule 2.

SCHEDULE 1

Ref: TBA18-02261
DA: 2018-00773
Site Address: 73 & 79 RAILWAY LANE WICKHAM
Lot and DP: LOT 11 DP 1106378 AND LOT 110 DP 1018454
Proposal: Alterations and additions to a mixed-use development
Mine Subsidence District: NEWCASTLE
**SCHEDULE 2**

**GENERAL TERMS OF APPROVAL**

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<td>Plans, Standards and Guidelines</td>
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1. These General Terms of Approval (GTAs) only apply to the development described in the plans and associated documentation relating to DA2018/00773 and provided to Subsidence Advisory NSW. Any amendments or subsequent modifications to the development may render these GTAs invalid.
   If the proposed development is amended or the development consent modified, Subsidence Advisory NSW must be notified to determine if any variations to these GTAs are required.

2. This approval expires 5 years after the date the approval was granted if construction work has not physically commenced.

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**

3. Demonstrate, by undertaking a sub-surface geotechnical investigation, that the site is not undermined (particular attention should be given to the North West corner of the site). The geotechnical investigation shall confirm the depth of the coal seam, the height of the seam (or mine workings if intersected) and thickness of competent rock (if identified).
   Submit a geotechnical report for review and acceptance by Subsidence Advisory NSW that details the results of the sub-surface investigation and includes predicted subsidence deformation parameters if workings are deemed to be under the lot or if the proposed structure is within the angle of influence of mapped workings. Parameters should be based on the worst-case scenario where all of the pillars in the nearby abandoned workings fail and must include predicted tilt, strain and radius of curvature and vertical subsidence parameters.

4. Submit an “Engineering Impact Statement” prior to commencement of detailed design for acceptance by SA NSW, which shall identify the:
   a. Mine subsidence parameters used for the design.
   b. Main building elements and materials.
   c. Risk of damage due to mine subsidence
   d. Design measures proposed to control the risks.
   e. Comment on the:
      - likely building damage in the event of mine subsidence.
      - sensitivity of the design to greater levels of mine subsidence.

5. Submit a final design incorporating the design methodology contained in the “Engineering Impact Statement”, for acceptance by Subsidence Advisory NSW prior to commencement of construction. It shall include certification by a qualified structural engineer to the effect that the improvements will remain “safe, serviceable and any damage from mine subsidence shall be limited to very slight damage in accordance with AS2870 (Damage Classification), and readily repairable” taking into consideration the mine subsidence parameters outlined above.
The final design submitted for acceptance by Subsidence Advisory NSW prior to the commencement of any construction work shall:

a) Be developed from the design accompanying the DA, dated 4 May 2018.

b) Include sufficient drawing plans, long-sections, elevations and details, to fully describe the work and proposed mine subsidence mitigation measures.

c) Include design mitigation measures to reduce the transfer of horizontal strain into building structures.

d) Include design mitigation measures to relieve excessive strains into building structures.

e) Include an additional grade for tilt due to mine subsidence, in excess of the minimum Code requirements for structures including pipes, gutters and wet areas.

f) For underground pipes or conduits allow for flexible joints, flexible bedding surround and flexible building connections and penetrations.

g) Ensure there is sufficient capacity in any storage structure for tilt due to mine subsidence.

h) Locate underground structures to facilitate ease of repair and replacement.

i) Ensure internal finishes are installed in accordance with relevant codes and standards and industry best practice guidelines with additional provision for mine subsidence.

j) Ensure there is suitable provision for articulation jointing in building elements. All control joints including articulation for mine subsidence are to be shown on the design plans and elevations.

k) Ensure there is provision for isolation joints between adjoining structures. For example, between a building and adjacent paving.

l) All roads, driveways and pavement areas are to be designed as flexible structures with an asphalt surface. Where a concrete surface course is required it shall be designed to include expansion and crack control joints or sacrificial sections, to minimise the risk of damage from mine subsidence.

**POST CONSTRUCTION**

7. Establish 4 survey monitoring reference marks on and around the perimeter of the building so that structure movement can be monitored should mine subsidence occur.

At least 2 of the following PMs or SSMs should be used as a benchmark:

- PM33181D
- PM57555
- SS4146D
- SS82742
- SS77177

A plan with the position of each monitoring reference mark including Easting & Northing and original RL is to be forwarded to SA NSW.

8. Upon completion of construction, work-as-executed certification by a qualified engineer will be required by Subsidence Advisory NSW confirming that construction was in accordance with the plans accepted by Subsidence Advisory NSW.

**Dispute Resolution**

If you are dissatisfied with the determination of this application, an appeal may be formally submitted with the Chief Executive Officer for an independent internal review. The application must be made in writing and must provide reasons why the determination should be changed.
ATTACHMENTS DISTRIBUTED UNDER SEPARATE COVER

DAC 01/12/20 – DA2018/00773 - 73-79 RAILWAY LANE, WICKHAM - ALTERATIONS AND ADDITIONS TO A MIXED-USE DEVELOPMENT

ITEM-43 Attachment F Sydney Trains Advice
Jeremy Bath  
Chief Executive Officer  
Newcastle Council  
PO Box 489  
Newcastle NSW 2300

ATTENTION: Damian Jaeger

Dear Mr Bath,

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007  
DEVELOPMENT APPLICATION – DA2018/00773  
73 & 79 Railway Lane, Wickham  
Lot 110 DP 1018454  
Lot 11 DP 1106378

I refer to Council’s letter requesting RailCorp’s concurrence for the above development application in accordance with clause 86(1) of the above SEPP.

As of 1 July 2018 the concurrence function for rail corridors now rests with Transport for NSW.

The proposed development has been assessed in accordance with the heads of consideration as outlined in Clause 86(4) being:

a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:

   i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and

   ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and

b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

The above matters have been taken into consideration and concurrence is hereby granted to the development proposed in development application DA2018/00773 subject to Council imposing the deferred commencement condition provided in Attachment A and operational conditions listed in Attachment B that will need to be complied with upon satisfaction of the Deferred Commencement Condition.
Should Council choose not to impose the deferred commencement condition in Attachment A and the operational conditions provided in Attachment B (as written), then concurrence from Transport for NSW has not been granted to the proposed development.

In the event that this development proposal is the subject of a Land and Environment Court appeal, Council’s attention is drawn to Section 8.12 of the Environmental Planning and Assessment Act 1979 which requires Council to give notice of that appeal to a concurrence authority. Transport for NSW therefore requests that Council comply with this requirement should such an event occur.

In addition to the above, under Clause 252A (5) of the Environmental Planning and Assessment Regulation 2000, a concurrence fee of $320 is payable to the concurrence authority for a development application, which in this case is TfNSW. Under Clause 252A (3) (b), TfNSW is waiving this fee for the subject DA.

If Council approves the development, a copy of the Notice of Determination and conditions of consent is requested to be forwarded to Sydney Trains and Transport for NSW.

For further information or clarification of any matters raised in this letter, please contact Mr Jim Tsirimiagos on 8575 0780.

Yours sincerely

Rodd Staples
Secretary
Transport for NSW

27 September 2018
Transport for NSW requests that the following information required in Attachment A and B is submitted to Sydney Trains and Transport for NSW.

Deferred Commencement Condition

This consent is not to operate until the Applicant satisfies the Council, within 12 months of the date of this consent, that it has obtained approval/certification from Sydney Trains as to the following matters and the approval/certification has been forwarded to the Council:

A1. The Applicant shall prepare and provide to Sydney Trains and Transport for NSW for approval/certification the following final version items:

1. Geotechnical and Structural report/drawings, including a hydrogeological engineering assessment, that meet Sydney Trains requirements. The Geotechnical Report must be based on a minimum of three actual borehole testing conducted on the site closest to the rail corridor. Consideration to potential risks to the rail corridor and assets must be included.

2. Construction methodology with construction details pertaining to structural support (including any potential dewatering) during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.

3. Cross sectional drawings to Sydney Trains requirements showing the rail corridor (including up to the nearest track within the corridor), sub soil profile, proposed basement excavation including horizontal and vertical measurements, and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.

4. Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement (including, but not limited to, any Right of Carriageways) and rail corridor land, as well as the Wickham Transport Interchange Project to Sydney Trains requirements.

5. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.
Attachment B

- If required by Sydney Trains, prior to the commencement of works, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.

- Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within or near to the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site.

- Given the possible likelihood of objects being dropped, thrown or blown onto the rail corridor from balconies, windows and other external features (e.g. roof terraces and external fire escapes) that face the rail corridor, the Applicant is required to install measures (e.g. awning windows, louvres, enclosed balconies etc.) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority shall not issue the Construction Certificate until it has confirmed that these measures are to be installed and have been indicated on the Construction Drawings.

- A risk analysis, which shall determine the required level of derailment protection (if any), shall be carried out in consultation with Sydney Trains. This risk analysis will determine the redundancy requirements or the minimum collision loads specified in Australian Standard AS5100 that needs to be complied with. The risk assessment is to be prepared in accordance with the Sydney Trains Safety Management System. The Principal Certifying Authority shall not issue the Construction Certificate until it has received written confirmation from Sydney Trains that the risk analysis has been prepared and the Principal Certifying Authority has also confirmed that the measures recommended in this risk analysis have been indicated on the Construction Drawings.

- During all stages of the development extreme care shall be taken to prevent environmental harm within the railway corridor. Any form of environmental harm to areas within the railway corridor or legislative non-compliance that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
During all stages of the development, environmental legislation and regulations will be complied with.

During all stages of the development, extreme care shall be taken to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.

Given the development site's location next to the rail corridor, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from Sydney Trains.

No work is permitted within the rail corridor, or its easements, at any time unless prior approval or an Agreement has been entered into with Sydney Trains. Where the Applicant proposes to enter the rail corridor, the Principal Certifying Authority shall not issue a Construction Certificate until written confirmation has been received from Sydney Trains confirming that its approval has been granted.

Prior to the commencement of works appropriate fencing is to be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction. Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

The applicant shall not at any stage block the corridor access gate on Railway Lane, and should make provision for easy and ongoing 24/7 access by rail vehicles, plant and equipment to support maintenance and emergency activities.

No scaffolding or hoarding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the proponent will be required to submit details of the scaffolding and hoarding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled “Development Near Rail Corridors and Busy Roads- Interim Guidelines”.
Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.

The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

Prior to the issue of a Construction Certificate a Risk Assessment/Management Plan regarding any potential risks to the rail corridor, infrastructure and assets, and a detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and 1500V catenary, contact and pull-off wires of the adjacent tracks, and to any high voltage aerial supplies within or adjacent to the rail corridor.

If required by Sydney Trains, a track monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.

No rock anchors/bolts are to be installed into Sydney Trains property or easements.

Prior to the issuing of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into Sydney Trains property or easements, unless agreed to be these authorities. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering & Maintenance Interface to determine the need for public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Rail Corridor Management Group to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering & Maintenance Interface to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

Sydney Trains advises they have an 11kV H/V aerial transmission line near to this site and any works, scaffolding and crane movements within 6 metres of the nearest transmission line conductor must be discussed and approved by Sydney Trains beforehand.

In addition, all works within 6 metres of the nearest transmission line conductor must comply with:
- ISSC 20 – Guideline for the Management of Activities within Electricity Easements and Close to Electricity Infrastructure.
Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains or Transport for NSW (TfNSW) must be submitted to Council for its records prior to the issuing of a Construction Certificate.

Any conditions issued as part of Sydney Trains or Transport for NSW approval/certification of any documentation for compliance with the Transport for NSW conditions of consent, those approval/certification conditions will also form part of the consent conditions that the Applicant is required to comply with.